IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 651 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PATEL VALLABHBHAI KADVABHAI RUPARELIA

Versus

BHIMJIBHAI KADVABHAI RUPARELIA

Appearance:

MR PJ KANABAR for Petitioner

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 25/06/2001

ORAL JUDGEMENT

1. Heard learned advocate Mr.P.J.Kanabar for the petitioner.

2. The petitioner has challenged the order dated 1st January, 2001 passed by 2nd Joint District Judge,

Junagadh below Exh.7 in the proceedings of Regular Civil Appeal No.78 of 2000.

3. That vide impugned order, the lower appellate Court has stayed the judgment and decree dated 10th March, 2000 passed by the learned 4th Joint Civil Judge (S.D.), Junagadh in the proceedings of Regular Civil Suit No.303 of 1986 and has put the appellant to certain conditions in respect to maintaining the account of agricultural produce in the said field and to furnish the security for due performance of the decree which ultimately may be passed in the proceedings of Regular Civil Appeal No.78 of 2000.

4. It is submitted on behalf of the petitioner that the impugned order is contrary to the law because according to the judgment, the petitioner/plaintiff was found to be in possession and by passing the impugned order, the petitioner is restrained from taking possession by executing a decree, and as such, the impugned order is erroneous. It is also submitted on behalf of the petitioner that so far as the decree of mesne profits is concerned, the trial Court has decreed to hold inquiry under Rule-12, Order-20 of the Civil Procedure Code for determination of mesne profits which is also stayed by the impugned order and thereby also the impugned order is erroneous.

5. It is difficult to accept the submission made on behalf of the petitioner. Perusal of the impugned order particularly reasons assigned in para-(4) suggests that the impugned order is just, proper and reasonable and is in consonance with the provisions of Order-41, Rule-5 of the Civil Procedure Code. That no jurisdictional error or illegal exercise of jurisdiction could be shown and as such the present revision application fails and is rejected summarily, with no order as to costs. However, the lower appellate Court is directed to expedite the final hearing of Regular Civil Appeal No.78 of 2000.

(A.K.Trivedi, J.)

(vrpanchal)*